



CONSTITUTIONAL LAW SYLLABUS

Fall 2025



Professor Peter M. Malaguti

Massachusetts School of Law

500 Federal Street

Andover, MA 01810

malaguti@mslaw.edu

(978) 681-0800

REQUIRED READING

Casebook: *You have three choices:*

Hard Cover Version: *Chemerinsky, CONSTITUTIONAL LAW (7th Ed. 2023, Aspen Pub., ISBN 9798886144574). This is the hardcover version with access to an online Study Center.*

EBook Version: *Chemerinsky, CONSTITUTIONAL LAW (7th Ed. 2023, Aspen Pub., ISBN 9798889060680). This is an electronic book accessed through Aspen's Casebook Connect platform. It also gives you access to the online Study Center. This is also cheaper than the hardcover edition.*

6th Edition: *Chemerinsky, CONSTITUTIONAL LAW (6th Ed. 2020, Aspen Pub., ISBN 9798889061403). If you already have the 6th edition, you can use it and supplement the new cases through Westlaw. I include links in the syllabus to the Westlaw version of the new cases. This does not come with online access to the Study Center*

NON-REQUIRED SUGGESTED SUPPLEMENTAL READING

Glannon Guide to Constitutional Law (2 book bundle)(Wolters-Kluwer). This can be purchased directly from Wolters Kluwer or on another online book seller site.

Chemerinsky, CONSTITUTIONAL LAW – PRINCIPLES AND POLICIES (4th^d Ed. 2015, Aspen Pub.)

I have also found that the "Law in a Flash" Con Law flashcards are pretty good study aids. They come in two sets: Con Law I and Con Law II.

PREPARATION FOR CLASS

Because the classes are interactive, the assignments are estimates only. The students are expected to attend every class and keep track of the pace. The students should also understand that, due to the complex nature of the issues and policy questions involved, and the sometimes-lengthy Supreme Court cases, the reading load in *Constitutional Law* is higher than in most classes. I expect you to be prepared for every class and will mark you as absent if you are not prepared.

There is no law school course in which it is more important to READ THE CASES than in Constitutional Law; indeed, most of the fact patterns on the MBE section are directly based on the fact patterns of the cases you read in Constitutional Law. Therefore, I will call on students to do the cases in class and will expect you to be prepared to be able to recite facts and answer questions about the cases.

GOALS AND OBJECTIVES OF THE COURSE

This is an introductory survey course in American Constitutional Law. Successful students will master the complicated structure and functions of the doctrines, legal methods, legal reasoning and legal analysis employed by lawyers who expect to practice constitutional law, the process by which our American legal system orders its government and protects the individual rights of its citizens. It is expected that students achieving a grade of "C" or better will have mastered the law and legal processes sufficiently to pass the constitutional law sections of the bar examination. It is also expected that successful students will achieve an understanding of the

fundamentals of constitutional law that is sufficient to enable them to take the first steps to handle constitutional law issues upon graduation from the Massachusetts School of Law. Students who fail to master the law and legal processes sufficiently enough to pass the constitutional law sections of the bar examination, or who lack the fundamental knowledge requisite to handle constitutional law issues upon graduation, will receive a grade below that of "C."

GRADING

Your final grade shall be composed of two (2) components:

1. YOUR MIDTERM EXAM, which will comprise 25% of your final grade.
2. YOUR FINAL EXAM, which will comprise 75% of your final grade.

Old exams, back to 2004, are on my TWEN website. They will be very useful study tools when you reach crunch time.

READING ASSIGNMENTS

Week	Class No.	Assignment Description	7th ed.	6th ed.
<u>One</u>				
	1 Tues. 8/21	Introduction to the course and a discussion of class expectations.	No reading	No reading
	2 Thurs. 8/21	<u>Chapter 1: The Federal Judicial Power</u> The Authority for Judicial Review (Marbury v. Madison, et al.) Mini-Lecture: Article III and Article I Courts; Limits on the Federal Judiciary (Interpretive limits, Congressional Limits & Advisory Opinions). Congressional Limits: The Exceptions and Regulations Clause (Congress' authority to limit Supreme Court appellate jurisdiction)	1-12 12-18	1-11 32-39
<u>Two</u>	3 Tues. 8/26	Congressional Limits (Continued): The Exceptions and Regulations Clause (Congress's authority to limit Supreme Court appellate jurisdiction) Justiciability Limits Advisory Opinions	12-18 18-20 20-22	32-39 39-41 41-44
	4 Thurs. 8/28	Justiciability Limits Standing Constitutional Standing (Injury, Causation & Redressibility)	22-23 23-48	44 45-66

<u>Three</u>	5 Tues. 9/2	Justiciability Limits Standing Prudential Standing	48-62	66-79
	6 Thurs. 9/4	Ripeness Mootness The Political Question Doctrine	62-68 68-72 72-97	79-85 85-90; 90-118
<u>Four</u>	7 Tues. 9/9	The Political Question Doctrine (cont.) Mini-Lecture: The Adequate and Independent State Grounds Doctrine	72-97	90-118
	8 Thurs. 9/11	<u>Chapter 2: The Federal Legislative Power</u> Introduction: Congress and the States The Necessary & Proper Clause (<i>McCulloch v. Maryland, Sebelius</i> , et al.) The Commerce Power The Initial Era Skip the 1890s-1937 at pages 159 to 166. (I will comment on this briefly.) 1937-1990s	99-100 100-130 130 131-133 139-153	119-150 155 155-156 156-159 166-181
<u>Five</u>	9 Tues. 9/16	The Tenth Amendment Between 1937 and the 1990s Taxing and Spending Power	152-201 201-208	181-215 240-248

	10 Thurs. 9/18	<p>Congress's Power Under the Post-Civil War Amendments</p> <p>Congress's Power to Authorize Suits Against State Government -- Eleventh Amendment Immunity (For some reason, the author removed this section from the 6th edition. Please refer to my detailed PowerPoint presentation for this topic that is tested on the bar exam.)</p>	208-227	248-274
			Student Study Guide on TWEN site, pp. 18-21.	Student Study Guide on TWEN site, pp. 18-21.
<u>Six</u>	11 Tues. 9/23	<u>Chapter 3: The Federal Executive Power</u>		
		Mini-Lecture: The Executive Powers Enumerated Under Article II of the Constitution Mini-Lecture: The So-Called "Take Care" Clause of Article II, § 3 (Also, So-Called "Signing Statements" and habeas corpus)		
		Inherent Presidential Power	229-237	275-284
		Executive Privilege	237-242	285-290
		The Authority of Congress To Increase Executive Power	242-243	290-291
		The Constitutional Problems of the Administrative State	243-244	291-292
		The Non-Delegation Doctrine and Its Demise	244-261	292-304
	12 Thurs. 9/25	The Legislative Veto and Its Demise	261-268	304-312
		Checking Administrative Power	269	312-313
		The Appointment and Removal Powers	269-288	313-339
		Separation of Powers and Foreign Policy	288-301	339-339
		War Powers: War Powers Resolution	301-305	354-358
<u>Seven</u>	13 Tues. 9/30	Presidential Power over Immigration	336-345	395-406
		Checks on the President	345	406
		Suing and Prosecuting the President	345-351	406-413

	18 Thurs. 10/16	Application of the Bill of Rights to Private Conduct (State Action)	474-513	532-536
<u>Ten</u>				
	19 Tues. 10/21	Chapter 6: Economic Liberties Economic Substantive Due Process Introduction & Early History & Lochner Era (Skim through this material, which is mostly for background, but which may portend where the current Supreme Court wants to go in the future) Economic Substantive Due Process Since 1937 Rebirth of Economic Due Process? The Contracts Clause	515 517 515-536 536-538 538-549 549-560	579-599 581 581-599 603-606 606-618 618-631
	20 Thurs. 10/23	The Takings Clause <i>Please note that we jump from here to page 1057.</i> Chapter 9: First Amendment Freedom of Expression Introduction	560-608 1057- 1064	631-682 1177-1185
<u>Eleven</u>	21 Tues. 10/28	Free Speech Methodology The Distinction Between Content-Based and Content- Neutral Laws Vagueness & Overbreadth	1064-1099 1099-1106	1186-1229 1229-1237
	22 Thurs. 10/30	Prior Restraints	1106-1121;	1237-1294

		Compelled Speech	1123-1129 1131-1161	1270-1294
<u>Twelve</u>	23 Tues. 11/4	Unprotected and Less Protected Speech Incitement/Clear and Present Danger Fighting Words and Hostile Audience Cases/ True Threats	1173-1174 1174-1175; 1190-1199 1199-1227	1308-1309 1309-1311; 1329-1341 1341-1365
	24 Thurs. 11/6	Sexually-Oriented Speech Obscenity & Child Pornography Protected but Low-Value Sexual Speech Profanity and Indecent Speech Mini-Lecture: Commercial Speech	1227 1227-1239 1240-1247 1247-1270	1365-1365 1365-1380 1380-1391 1391-1404
<u>Thirteen</u>	25 Tues. 11/11	Places Available for Speech Speech in Schools	1362-1396 1403-1419	1531-1574 1582-1597
	26 Thurs. 11/13	Speech Rights for Government Employees Chapter 10: First Amendment Freedom of Religion Introduction	1419-1426 1477 1477-1480	1597-1605 1665 1665-1671
<u>Fourteen</u>	27T Tues. 11/18	The Free Exercise Clause The Establishment Clause	1485-1524 1524-1529 1533-1575	1675-1690 1715-1717 1717-1736

	28 Thurs. 11/20	Please note that, at this point, we are jumping back in the casebook to Equal Protection. <u>Chapter 7: Equal Protection</u> Mini-Lecture on Affirmative Action	609-674 677-700 713-764 772-794	683-758 760-790 836-854 876-901
<u>Fifteen</u>	29 Tues. 11/25	<u>Chapter 8: Fundamental Rights Under Due Process and Equal Protection</u>	795-915 946-980 999-1026	903-981 1006-1011 1016-1042 1046-1083 1106-1128

CLASS EXPECTATIONS

Anticipated Due Dates

I DO CALL ON STUDENTS RANDOMLY, AND YOU ARE EXPECTED TO BE PREPARED FOR EVERY CLASS. The Constitutional Law section of the bar exam is largely based on the most important Constitutional Law cases that we will read in class. It is essential that you read these cases closely and understand them.

Because the classes are intended to be highly interactive, the listed anticipated due dates are to be considered aspirational. At times, especially at the beginning of the semester, we may fall behind of the anticipated due dates; it is also possible that we will move more quickly at times than anticipated. You therefore should continuously match those dates to what we have actually completed in class. Please be prepared for every class by staying slightly ahead of the anticipated due dates and by adjusting and readjusting as the semester progresses.

If you have read ahead substantially, we expect you to review what you have already read just before class. It is no excuse to state, "I read the case too long ago to remember it." Lawyers often write briefs months before they argue in court and, like you, are expected to know the material when they are called on to discuss the legal issues.

Notes and Tape Recorders in Class

We test what we teach, and we teach by the syllabus. This means that, if you do all the reading and come to all the classes, you will see no surprises on the final exam. We are told by former students that those who fail to come to class tend not to do very well on the final exam. You therefore should come to class and develop an effective method of recording what goes on. Since the classes are interactive and it is not always possible to take copious notes on every point, we recommend the use of tape/digital recorders in class. A recorder should assist in rounding out, or filling gaps in, notes. It also can serve as a "safety net" in a fast-paced class.

Some students take notes on a laptop or netbook, and this is fine. One caveat, however: we sometimes notice that students are more consumed with typing out what is said in class word-for-word than with listening and participating. The purpose of class is not for you to be a scribe; it is for you to develop analytical skills, and this cannot be achieved if you are single-mindedly typing. You will always be able to supplement the law we discuss in class with outside reading.

Frequent Absences

I take attendance and also call on students randomly; I will have the pleasure of speaking with each of you several times this semester. Professors at MSL are authorized to lower the grades of frequently absent or frequently unprepared students by one-third of a grade. By way of illustration, this means that a final grade of C will be lowered to a C- if the student is absent from class an inordinate number of times; a B- will be lowered to a C+, and so on. If I call on you, and you are either absent or unprepared four (4) or more times, I will lower your grade as described above. An absence is an absence. Informing me that you are going to be missing class, whatever the reason, will not prevent me from marking you absent. If you miss more than three classes, you likely have outside issues that should suggest that you might want to take a leave of absence because law school is not your first priority.

Being Prepared

We expect you to be prepared for every class and treat an unprepared student as an absent student. This is not college, and old college tricks like skimming, cramming and pretending to be prepared simply will not work. Here is what we expect of you before, during and after class:

Before Class

1. Read, reread, study and THINK thoroughly about the assigned cases and materials;
2. Do not leave a case or other reading until you are confident that you thoroughly understand the facts sufficiently to restate them if asked to do so in class;
3. Do not leave a case or other reading until you are confident that you understand why the case book author placed the case in the book;
4. Do not leave a case or other reading until you are confident that you can recite the legal issue(s) presented in the case;
5. Do not leave a case or other reading until you are confident that you know and UNDERSTAND each rule of law, and its elements, presented in the case;
6. Do not leave a case or other reading until you are confident that you understand the policy reasons for the adoption of each rule of law implicated in the case;
7. Read, reread, study and THINK thoroughly about the relevant "hypotheticals" or problems pertaining to the subject matter being studied in each class;
8. Do not leave a hypothetical or problem until you are confident that you understand why the professor assigned it;
9. Do not leave a hypothetical or problem until you are confident that you can recite the legal issue(s) presented in it;
10. Do not leave a hypothetical or problem until you are confident that you know and UNDERSTAND each rule of law, and its elements, implicated in the hypothetical or problem.

11. Do not leave a hypothetical or problem until you are confident that you understand the policy reasons for the adoption of each rule of law implicated by the hypothetical or problem.

During Class

1. Be prepared well enough to be able to provide an accurate recitation of the facts and holding of each assigned case, hypothetical or problem.
2. Be prepared well enough to be able to provide a concise recitation of the issue(s) presented in each case, hypothetical or problem.
3. Be prepared well enough to be able intelligently discuss the legal issues and rules of law presented or implicated by the assigned reading.
4. Be prepared enough to be able to intelligently discuss any factual variations the professor and/or other students propose during class.
5. Be prepared enough to be able to intelligently discuss flaws and strengths in the court's reasoning or in the applicable rule of law;
6. Be prepared enough to be able to intelligently discuss alternative arguments that might have better resolved the dispute at issue in each case;
7. Be prepared enough to be able to intelligently discuss the policy issues relevant to the each case, hypothetical or problem.

After Class

1. Identify and clarify anything confusing about the law or application or law covered in class. If necessary, work with classmates collaboratively to achieve mastery of the law;
2. Rework your class notes and case briefs to reflect a more accurate picture of the cases, issues and rules of law.
3. Think about how the lesson covered in the particular class fits into the overarching body of property law.

You will be expected to read each assignment in its entirety. Reading "case notes," "canned briefs," Westlaw briefs and other shortcut aids, at the expense of the actual cases, will fail to prepare you adequately and will result in you being marked as unprepared.

RULES ON CLASSROOM DECORUM

I expect you to observe the following rules in class. I do not believe any of these rules are unreasonable:

1. **Please Stay Put.** Our day class schedule will be 12:30 p.m. to 2:15 p.m. The evening schedule will be 9:00 p.m. to 10:50 p.m. These are long classes. To the extent possible, please stay in your seat. A parade of students in and out of the class tends to be disruptive to the conduct of the class.
2. **Timeliness.** Please arrive on time. Late arrivals are disruptive to the class. Tardiness should still be the exception rather than the rule. I often take attendance at the beginning of the class. Late students will be marked absent, and I will not change this designation if you come in later.

If tardiness becomes an issue, i.e., if it starts to cause disruptions, I will impose a hard-and-fast rule that those arriving late will not be allowed into the classroom.

3. **Stand, Name, Project.** When you speak in class, whether it's while volunteering or after being called on, please stand, state your first name, face the rest of the class (not me), and project your voice so as to be heard. Please do this for the entire semester. Speaking in public is uncomfortable at first, but even those of you who intend to practice transactional law as opposed to litigation must realize that the practice of law is a performance art as well as an intellectual endeavor.
4. **Cell Phones and Messaging.** *Except for class purposes*, there will be ***no cell phone use in class***. I reserve the right to instruct students to leave the class immediately if they engage in text messaging, instant messaging, social media, or other forms of electronic communication during class, and will do so if this issue becomes a problem. If you refuse an instruction to leave, I will report you to the administration for discipline.
4. **Laptop Computers.** While I believe that laptop computers are an invaluable classroom tool, lately their use sometimes has become troublesome in several ways. Like cell phones, they beep and make noises when starting up. Please arrive early enough to start your laptop prior to class so the start-up noises will not be disruptive. If you cannot set up your laptop prior to class, please ensure that it is on mute and will not be disruptive.

It is never appropriate to use computers to play computer games, send and receive instant messages, surf the net, or perform other computer functions not related to the task at hand. I wander around the room a bit while teaching and will probably catch at least some of such off-focus activity if it occurs.

With limited exceptions, attorneys are not permitted to use their laptops, tabs, or other electronic devices while arguing or trying cases in court. The same will be true in my class. When you end up standing to present a case or answer questions framed by the professor, *you are to close your laptops and put down other devices*. Your focus will be on the professor and other students. If you feel that you are unable to remember all you have gleaned from your reading, you may refer to paper notes.

5. **Talking in Class.** This will be an interactive class, and it is normal for there to be a bit of a "buzz" while we are discussing a case or "hypothetical." I do not usually get upset if the class is analyzing a hypothetical, and some students do a little "kibitzing" in the process. However, I still expect you to listen while others are talking so you can respond if called upon, and, most importantly, to respect others by not talking over them. I will not tolerate talking that doesn't involve the subject matter at hand.
6. **Eating/Drinking in Class.** I generally do not approve of anything that might divert your focus from the class discussion, and eating and drinking in class certainly falls into that category. On the other hand, I do understand that stressed-for-time students, especially evening students, often are unable to take meals at normal hours, and therefore need some sustenance to get them through. Generally, therefore, I tolerate small snacks and drinks during class. I will not tolerate full meals, full "submarine" sandwiches, or anything of the like. I also will not tolerate undue noise while eating, e.g. stubborn plastic wrappers, crunchy foods, etc. I will ban all foods and drinks in class if I think they are becoming a distraction.
9. **Civility above All Else.** There is often intellectual tension in a law school classroom especially with subjects like Constitutional Law, on which reasonable minds can differ. Students and professors can differ -- sometimes widely -- in their views on morals, ethics, society, politics and ways of life. It is my intention to treat each of you with the utmost courtesy and respect, even when we disagree. In turn, I expect that each of you

will also treat each other with respect and courtesy. Passionate argument is terrific if kept civil and respectful. Remember: argue the issues, not the personalities!